

Exhibit M-K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID AGOADO, LEEANN MCNALLY,
CRAIG MOORE, CHRIS PIERRE, THOMAS
SHARKEY, MADGE SHIPMAN, and DOREEN
VAZQUEZ individually and on
behalf of all others similarly situated,
Plaintiffs,

-against-

MIDLAND FUNDING, LLC, MIDLAND
FUNDING, LLC. doing business in
New York as MIDLAND FUNDING OF
DELAWARE, LLC, and MIDLAND
CREDIT MANAGEMENT, INC.,
Defendants.

-----x

5036 Jericho Turnpike
Commack, New York

June 26, 2015
10:10 a.m.

Examination Before Trial of the
Plaintiff, LEEANN MCNALLY, pursuant to
Order, before CINDY A. AFANADOR, a Notary
Public of the State of New York.

CINDY AFANADOR COURT REPORTING, INC.
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1 LeeAnn McNally

2 Q. How many hours a week were you
3 working?

4 A. 35.

5 Q. Have you ever worked as a debt
6 collector?

7 A. No.

8 Q. You said you currently live at
9 11 Chestnut Street in Coram?

10 A. Yes.

11 Q. Is Coram on Long Island?

12 A. Yes.

13 Q. Is it north shore or south shore?

14 A. North shore.

15 Q. When did you move to 11 Chestnut
16 Street?

17 A. October of 2008.

18 Q. Who do you live with at
19 11 Chestnut Street?

20 MR. BIANCO: Objection to the
21 form of the question.

22 You mean from the beginning,
23 currently?

24 It may not have changed.

25 MR. CURTIS JOHNSON: That's fine.

1 LeeAnn McNally

2 Q. Who do you currently live with at
3 11 Chestnut Street?

4 A. Christopher McNally, my husband.

5 Q. In your time living at
6 11 Chestnut Street, did anyone else ever live
7 there?

8 A. No.

9 Q. Did Christopher McNally live
10 there the whole time?

11 A. No.

12 Q. When did he move in?

13 A. The same time I did, October
14 2008. Sorry.

15 Q. So he did live there the whole
16 time you've lived there?

17 A. Oh, I'm sorry, yes.

18 I misunderstood.

19 Q. I didn't mean the whole time
20 since the beginning of time. That was an
21 imprecise question.

22 Where did you live before
23 11 Chestnut Street?

24 A. 151 Hilary Street, Oakdale,
25 New York 11769.

1 LeeAnn McNally

2 Q. And how long did you live at
3 151 Hilary Street?

4 A. From the age of six months until
5 the age of 27.

6 Q. So that's your parents' house?

7 A. Yes.

8 Q. Do they still live there?

9 A. Yes.

10 Q. What are your parents' names?

11 A. Deborah and Dennis DeRosa.

12 Q. Do you still talk to your
13 parents?

14 A. Yes.

15 Q. Do you have a good relationship
16 with them?

17 A. Not really.

18 Q. In your adult life, have you ever
19 lived anywhere else other than 151 Hilary
20 Street and 11 Chestnut Street?

21 A. Yes.

22 Q. Where?

23 A. 1427 Hallock Avenue, Port Jeff
24 Station.

25 Q. Can you spell Hallock?

1 LeeAnn McNally

2 A. H-A-L-L-O-C-K.

3 Q. When did you live there?

4 A. I think from like 2007 -- it was
5 just a year. 2007 to 2008. The year before I
6 got married.

7 MR. BIANCO: That's Port
8 Jefferson Station, right?

9 THE WITNESS: Port Jefferson
10 Station, yes.

11 A. I don't remember the ZIP code.

12 MR. BIANCO: I think you said
13 Port Jeff. I'm not sure these gentlemen
14 are from Long Island.

15 I wanted to clarify.

16 THE WITNESS: Okay. Sorry.

17 MR. CURTIS JOHNSON: Thank you.

18 Q. When you moved from Hilary Street
19 to -- is it Hallock Street?

20 A. It's Hallock Avenue.

21 Q. Hallock Avenue.

22 When you moved from Hilary Street
23 to Hallock Avenue, did you contact your banks
24 and other creditors and give them your updated
25 address?

1 LeeAnn McNally

2 A. No.

3 Q. Did you set up mail forwarding at
4 the post office?

5 A. Yes.

6 Q. You had your mail forwarded from
7 Hilary Street to Hallock Avenue?

8 A. Yes.

9 Q. When you moved from Hallock
10 Avenue to 11 Chestnut Street, did you update
11 your creditors as to your new address?

12 A. No.

13 Q. Did you set up mail forwarding at
14 the post office?

15 A. Yes.

16 Q. When you lived at Hallock Avenue,
17 did you get mail that had been mailed to you
18 at 151 Hilary Street?

19 A. Yes.

20 Q. When you lived at 11 or now that
21 you live at 11 Chestnut Street, do you get
22 mail that's mailed to you at 151 Hilary
23 Street?

24 A. Could you rephrase the question?

25 Q. You live at 11 Chestnut Street,

1 LeeAnn McNally

2 to pay loans?

3 It's ambiguous.

4 Q. Which loans have you failed to
5 repay?

6 A. A few of my student loans and my
7 Beneficial loan that I took out.

8 Q. When did you start having to make
9 payments on your student loans?

10 A. Six months out of school, so six
11 months from when I left Stony Brook.

12 Q. Approximately 2001?

13 A. Approximately.

14 Q. And at what point did you stop
15 paying your student loans?

16 A. I don't recall.

17 Q. How many years did you pay your
18 student loans before you stopped paying them?

19 A. A few; three, maybe four. I
20 don't recall exactly.

21 Q. Okay.

22 Why did you stop paying your
23 student loans?

24 A. I had no money.

25 Q. When did you obtain your loan

1 LeeAnn McNally

2 Q. Do you know how much you borrowed
3 from Beneficial?

4 A. \$5,000.

5 Q. Do you know what the terms of
6 that loan were?

7 A. No.

8 Q. Do you know if you had to pay it
9 back in installments or in a lump sum?

10 A. I don't recall.

11 Q. Do you know what the interest
12 rate was?

13 A. I don't recall.

14 Q. Do you believe there was an
15 interest rate?

16 A. I'm sure there was.

17 Q. What did you use the money you
18 got from Beneficial for?

19 A. Pay bills, buy food, put gas in
20 my car.

21 Q. And you already testified you
22 didn't repay the loan to Beneficial?

23 A. No.

24 Q. Have you ever heard of Midland
25 Funding?

1 LeeAnn McNally

2 can mark it. I have copies.

3 MR. BIANCO: I have been jotting
4 on this one, if you have a clean copy.

5 (McNally Exhibit 1, Second Amended
6 Class Action Complaint, marked for
7 identification.)

8 Q. Showing you what's been marked as
9 Exhibit McNally 1. It's a copy of the Second
10 Amended Class Action Complaint in this action.

11 (Hanging.)

12 A. (Witness reviewing.)

13 Q. Do you recognize that document?

14 A. Yes.

15 Q. Do you see at the top where -- at
16 the very top of the document, Eastern District
17 of New York, United States District Court?

18 A. Yes.

19 Q. Okay.

20 Do you understand that that is
21 the court that your lawsuit is pending in?

22 A. I do now.

23 Q. When did you learn that?

24 A. Just now. I am not gonna lie. I
25 don't know anything about this stuff, I really

1 LeeAnn McNally

2 don't.

3 Q. Okay. That's fine.

4 I will take that back for now. I
5 am not going to ask questions about it at this
6 moment.

7 If you saw a document with a
8 litigation caption listing a court on the top
9 of it, would you contact that court for more
10 information about the lawsuit?

11 MR. BIANCO: Objection to the
12 form of the question.

13 A. No, 'cause I wouldn't think to do
14 that.

15 Q. Okay.

16 Do you have any recollection of
17 being sued by Midland Funding?

18 MR. BIANCO: Objection to the
19 form of the question.

20 A. The only thing that I remember is
21 my husband saying our accounts were frozen and
22 that it was as a result of a lawsuit. That is
23 all I remember.

24 Q. Has anyone ever obtained a
25 judgment against you?

1 LeeAnn McNally

2 form of the question.

3 You can answer.

4 A. I really didn't understand.

5 Q. When did you learn that Midland
6 Funding had a judgment against you?

7 A. When my husband told me that our
8 accounts had been frozen.

9 Q. And what did you do in response
10 to learning that Midland Funding had a
11 judgment against you?

12 A. I called -- I believe I called
13 Forster & Garbus. I was told that they had
14 froze my account until I paid them \$7,600,
15 which was way more than I owed. I was
16 hysterical. I called my father and went to
17 the bank and tried to get the thing unfrozen.
18 They told me they couldn't and that's when I
19 turned it over to my husband to negotiate.

20 Q. You called them and they told you
21 you owed \$7,600?

22 A. That's correct.

23 Q. And you didn't believe you owed
24 that amount?

25 A. No.

1 LeeAnn McNally

2 Q. What amount did you believe you
3 owed?

4 A. 5,000.

5 Q. Earlier you testified that you
6 got a loan from Beneficial; is that right?

7 A. Yes.

8 Q. And that you understood there was
9 interest on that loan?

10 MR. BIANCO: Objection to the
11 form of the question.

12 A. You know, I wasn't thinking that.

13 Q. Thinking about it now, could some
14 of the additional money, the difference
15 between 5,000 and \$7,600 have been interest?

16 A. Thinking now, yeah.

17 Q. Okay.

18 Did you have any reason to doubt
19 that you owed the amount that Forster & Garbus
20 told you you owed?

21 MR. BIANCO: Objection to the
22 form of the question.

23 A. I didn't want to believe I owed
24 \$7,600, but I knew I owed them money. I knew
25 I owed Beneficial money.

1 LeeAnn McNally

2 Q. But did you have any reason,
3 other than your desire, you said you didn't
4 want to, but did you have any reason to doubt
5 that you owed the money?

6 MR. BIANCO: Objection to the
7 form of the question.

8 A. No.

9 Q. You said when you learned of the
10 judgment against you you called your father;
11 your father is Dennis DeRosa; is that right?

12 A. Yes.

13 Q. What did you talk about with your
14 father?

15 A. That my account was frozen, we
16 couldn't pay it and could he help us by giving
17 us some money.

18 Q. When you talked to your father,
19 did he ever mention that he received a Summons
20 and Complaint from Forster & Garbus?

21 A. No.

22 Q. Was your father familiar with the
23 name Forster & Garbus when you talked to him?

24 A. He didn't seem to be.

25 Q. Had your father ever heard of

1 LeeAnn McNally

2 A. I don't understand what that
3 means.

4 Q. Okay.

5 When you learned there was a
6 judgment against you in connection with your
7 Beneficial loan, did you think you had any
8 reason that you didn't owe them money?

9 MR. BIANCO: Objection to the
10 form of the question.

11 A. I just disputed the amount.

12 Q. Okay.

13 At some point you decided to pay
14 the judgment against you in connection with
15 your Beneficial loan; is that right?

16 A. Like I said, my husband was the
17 one who negotiated it, because we needed to
18 get our accounts unfrozen.

19 Q. Do you know when your husband
20 negotiated to pay the judgment?

21 A. I don't recall.

22 Q. You said that he found out about
23 your accounts being frozen in June of 2012 or
24 June of 2013; is that right?

25 A. Approximately I know it was June.

1 LeeAnn McNally

2 I can't remember the year.

3 Q. But one of those two?

4 A. Yes.

5 Q. Do you know how soon after
6 learning your accounts were frozen you
7 negotiated to pay the loan?

8 MR. BIANCO: Objection.

9 Q. Do you know how long after you
10 learned your accounts were frozen that you
11 decided to pay the judgment?

12 MR. BIANCO: Objection to the
13 form of the question.

14 A. As soon as we could. We needed
15 to pay our mortgage.

16 Q. You said that your husband
17 negotiated payment of the judgment; is that
18 right?

19 A. Yes.

20 Q. What do you mean by negotiated?

21 A. We didn't have \$7,600 to pay
22 them, so we talked to them about an amount we
23 could afford to pay them.

24 Q. What was that amount?

25 A. I believe 5,500.

1 LeeAnn McNally

2 Q. And did you actually pay 5,500 to
3 settle the judgment?

4 A. It could have been more. I
5 couldn't tell you.

6 Q. Did you pay less than the money
7 that Forster & Garbus said you owed?

8 A. Yes.

9 Q. And that was satisfaction in full
10 for the judgment, right?

11 A. I believe so.

12 MR. FINKEL: Good time to take a
13 break?

14 MR. CURTIS JOHNSON: Yeah, it's a
15 little early, but I am happy to take a
16 break before I get into the documents.

17 (Recess taken from 11:04 a.m. to
18 11:17 a.m.)

19 (McNally Exhibit 2, Document
20 bearing Bates stamps MCM-0318 through
21 MCM-0319, marked for identification.)

22 Q. Showing you what's been marked as
23 Exhibit McNally 2, bears Bates stamps MCM-0318
24 through MCM-0319.

25 Do you recognize this document?

1 LeeAnn McNally

2 A. Yes.

3 Q. What is it?

4 A. The check.

5 Q. Whose name is on the check?

6 A. My name.

7 Q. This is your maiden name, LeeAnn
8 DeRosa?

9 A. Yes.

10 Q. Who's the check from?

11 A. Beneficial.

12 Q. What is the address on the check?

13 A. 151 Hilary Street, Oakdale,
14 New York.

15 Q. What is the date on the check?

16 A. July 17, 2006.

17 Q. Did you live at 151 Hilary Street
18 in Oakdale in 2006?

19 A. Yes.

20 Q. The check was for, I'm sorry?

21 A. \$5,000.

22 Q. Can you turn to the second page?

23 A. (Witness complying.)

24 Q. The endorsement line, is that
25 your signature?

1 LeeAnn McNally

2 A. Yes.

3 Q. Do you remember receiving this
4 check?

5 A. Yes.

6 Q. What did you do with it when you
7 received it?

8 A. I don't recall if I either
9 deposited it or cashed it. I don't recall.

10 Q. Okay.

11 But you got the money that is
12 indicated on the check, right?

13 A. Yes.

14 Q. On the right side of the check in
15 bold letters, it says, "Signing this check
16 will result in a loan that must be repaid with
17 interest and fees."

18 Do you see that?

19 A. Yes.

20 Q. Did you understand that when you
21 signed the check you were entering into a loan
22 with Beneficial?

23 A. Yes.

24 Q. Did you understand you would be
25 charged interest and fees on that loan?

1 LeeAnn McNally

2 A. Yes.

3 Q. Okay.

4 Do you remember the terms of the
5 loan at all?

6 A. No.

7 Q. Do you know if they were provided
8 to you?

9 A. I don't recall.

10 Q. Okay.

11 MR. BIANCO: Can I interrupt for
12 a second?

13 MR. CURTIS JOHNSON: Yes.

14 MR. BIANCO: It looks like there
15 is possibly the last four digits of the
16 social security number on the back.

17 MR. CURTIS JOHNSON: Which if we
18 were to redact, we would not redact the
19 last four, generally.

20 MR. BIANCO: I want to make sure
21 that's what it is.

22 5196, is that the last four of
23 your social?

24 THE WITNESS: No.

25 MR. BIANCO: I was going to mark

1 LeeAnn McNally

2 say for sure.

3 Q. Okay.

4 Do you believe it's possible that
5 the text following the check portion of
6 Exhibit McNally 3 was at one point attached to
7 Exhibit McNally 2 --

8 MR. BIANCO: Objection to the
9 form of the question.

10 You can answer.

11 Q. -- with your name on it instead
12 of Sample A. Sample?

13 A. Yes.

14 Q. What is your understanding of
15 everything after the check on Exhibit McNally
16 3; what is your understanding of what that is?

17 MR. BIANCO: Objection to the
18 form of the question.

19 Maybe just give her a minute to
20 review it.

21 MR. CURTIS JOHNSON: Of course.
22 You should look at both pages.

23 A. (Witness reviewing.)

24 Could you repeat the question
25 about this paper?

1 LeeAnn McNally

2 Q. Sure.

3 MR. CURTIS JOHNSON: Can you read
4 it back?

5 (Record read.)

6 A. It is a -- it's paperwork about a
7 loan. That's my understanding.

8 Q. You understand the terms and
9 conditions in connection with a loan that will
10 be extended if someone had cashed a real check
11 that wasn't written to Sample A. Sample?

12 MR. BIANCO: Objection to the
13 form of the question.

14 You can answer.

15 A. Yes.

16 Q. Do you believe that this
17 documentation accompanied the check you
18 received from Beneficial?

19 A. Yes.

20 Q. What was your relationship with
21 Beneficial before receiving the check from
22 them?

23 MR. BIANCO: Objection to the
24 form of the question.

25 A. I don't believe I had one.

1 LeeAnn McNally

2 Q. You didn't have any banking
3 relationship with them?

4 A. Not that I recall, no.

5 Q. Had you ever heard of Beneficial
6 before you received a check in the mail?

7 A. I believe -- I recognize HSBC.

8 Q. Okay.

9 And so the record is clear,
10 Exhibit McNally 2 says on the top left corner
11 of the check "Beneficial member HSBC"?

12 A. Group.

13 Q. Group.

14 MR. BIANCO: I think that's a
15 trademark between the two words.

16 MR. CURTIS JOHNSON: I think so.

17 Q. So is it your understanding that
18 Beneficial and HSBC are related companies or
19 entities?

20 A. Yes.

21 Q. Did you have any relationship
22 with HSBC before receiving anything from
23 Beneficial?

24 A. No.

25 Q. If you look at Exhibit McNally 3,

1 LeeAnn McNally

2 marked for identification.)

3 Q. Okay.

4 Showing you what's been marked as
5 McNally 4, it appears to be a letter from
6 Forster & Garbus dated December 19, 2011. It
7 doesn't have a Bates stamp on it.

8 Do you recognize this document?

9 A. No.

10 Q. Who is this letter addressed to?

11 A. Me.

12 Q. What is the address listed?

13 A. 151 Hilary Street, Oakdale.

14 Q. What is the date of the letter?

15 A. December 19, 2011.

16 Q. Did you live at 151 Hilary Street
17 on December 19, 2011?

18 A. No.

19 Q. Did you have mail forwarded from
20 151 Hilary Street to your current address on
21 December 19, 2011?

22 MR. BIANCO: Objection to the
23 form of the question.

24 You can answer.

25 A. All I remember is changing my

1 LeeAnn McNally

2 MR. BIANCO: Objection to the
3 form of the question.

4 Q. -- at 151 Hilary Street?

5 A. I don't doubt it.

6 Q. Do you have an understanding of
7 why your parents wouldn't have forwarded
8 something that they received similar to or
9 exactly the same as McNally Exhibit 4 to you?

10 MR. BIANCO: Objection to the
11 form of the question.

12 A. I don't know. Like I said, I
13 don't have a very good relationship with my
14 parents. I don't speak to them much. They
15 think of me as an -- I am a disappointment to
16 them, so I don't really speak to them. I
17 called my father out of desperation, and that
18 was it.

19 Q. I'm going to show you what's been
20 marked McNally 5 (handing).

21 A. (Witness reviewing.)

22 Q. Take a second to flip through all
23 three pages of McNally 5, which are Bates
24 stamped Agoado-F&G-000003 through 000005.

25 Do you recognize this document?

1 LeeAnn McNally

2 A. It looks familiar, but I can't
3 say I completely recognize it.

4 Q. In what way does it look
5 familiar?

6 A. The first page just looks
7 familiar to me.

8 Q. You may have seen it before?

9 A. I cannot emphasize any more than
10 that, but yeah, it's possible.

11 Q. Do you have any memory of seeing
12 this document before?

13 A. Maybe a few years ago.

14 Q. Would a few years ago be 2012?

15 A. Possibly.

16 Q. This document is dated February
17 6, 2012; would it have been sometime around
18 the time the document was dated?

19 A. I suppose.

20 Q. Okay.

21 Had you seen this document
22 February 6th or approximately in February or
23 March of 2012, would you have had an
24 understanding of what it was?

25 MR. BIANCO: Objection to the

1 LeeAnn McNally

2 with it in 2012?

3 MR. BIANCO: Objection to the
4 form of the question.

5 You can answer.

6 A. I don't even know how to answer
7 it. I would have tried to do something. I
8 couldn't pay \$6,000. I don't have that kind
9 of money, never did, and never will. So I
10 don't know what I would have done.

11 Q. Would you have contacted
12 Forster & Garbus?

13 MR. BIANCO: Objection to the
14 form of the question.

15 You can answer.

16 A. Possibly.

17 (McNally Exhibit 6, Document
18 bearing Bates stamp Agoado-F&G 000006,
19 marked for identification.)

20 Q. Showing you what's been marked as
21 Exhibit McNally 6 (handing).

22 A. (Witness reviewing.)

23 Q. It bears Bates stamp Agoado-F&G
24 000006, although it's difficult to read. It's
25 covered up by other writing. Can you make

1 LeeAnn McNally

2 that out in the bottom?

3 A. Um-hum.

4 Q. Okay.

5 Do you recognize the document?

6 A. No.

7 Q. Do you have any understanding
8 what this document is?

9 A. No.

10 Q. You see at the top it says,
11 "Affidavit of Service"?

12 A. Yes.

13 Q. After the caption it says,
14 "Thomas Steidel being duly sworn deposes and
15 says: Deponent is not a party herein, is over
16 18 years of age and resides in New York State.
17 On March 3, 2012 at 12:57 p.m. at 151 Hilary
18 Street, Oakdale, New York, the deponent served
19 the within summons and complaint with Index
20 BAC 051240/12, and date purchased, February
21 21, 2012 endorsed thereon, LeeAnn DeRosa
22 defendant therein named."

23 Skipping down to number 3, says
24 "By delivering a true copy of each to Dennis
25 DeRosa-father a person of suitable age and

1 LeeAnn McNally
2 discretion. Said recipient" and there is an
3 "X" mark for "dwelling/house (usual place of
4 abode) within the state."

5 Do you see that?

6 A. Yes.

7 Q. Do you have any reason to believe
8 your summons and formal complaint weren't
9 served on Dennis DeRosa as stated in this
10 document?

11 A. I have no idea. I am not my dad.

12 Q. If you look down where it says
13 number 7, says "A description of defendant or
14 other person served or spoken to on behalf of
15 the defendant is as follows: Sex, male; color
16 of skin, white; color of hair, gray; age, 51
17 to 65 years; height, 5'4 to 5'8; weight, 131
18 to 160 pounds; other features, balding."

19 Does that description describe
20 your father's appearance?

21 A. Yes.

22 (McNally Exhibit 7, Document
23 entitled Work Order Number 153972, marked
24 for identification.)

25 Q. Showing you what's been marked as

1 LeeAnn McNally

2 that long.

3 A. (Witness reviewing.)

4 Q. Let me know when you are
5 finished.

6 A. I am good.

7 Oh, wait, another page.

8 (Witness reviewing.)

9 Okay.

10 Q. Have you ever seen that document
11 before today?

12 A. No.

13 Q. Having read through the document,
14 did anything immediately jump out to you as
15 untrue?

16 MR. BIANCO: Objection to the
17 form of the question.

18 You can answer.

19 A. No.

20 Q. Look back at what's been marked
21 as paragraph 1.

22 A. (Witness reviewing.)

23 Q. Read it over real quick again so
24 it's fresh in your mind.

25 A. Okay.

1 LeeAnn McNally

2 Q. Do you have any reason to doubt
3 the truthfulness of that paragraph?

4 MR. BIANCO: Objection to the
5 form of the question.

6 You can answer.

7 A. No.

8 Q. Do you have any reason to doubt
9 that anything in that paragraph is inaccurate
10 or false?

11 MR. BIANCO: Objection to the
12 form of the question.

13 A. No.

14 Q. Look at paragraph 2.

15 A. (Witness reviewing.)

16 Q. Do the same thing, just get it in
17 your head.

18 A. (Witness reviewing.)

19 Okay.

20 Q. Do you have any reason to doubt
21 the veracity of statements in paragraph 2?

22 A. No.

23 Q. Nothing in paragraph 2 strikes
24 you as untrue?

25 A. Nope.

1 LeeAnn McNally

2 Q. Look at paragraph 3, which starts
3 on page -- only on page 1, I'm sorry.

4 A. Okay.
5 (Witness reviewing.)

6 Q. One sentence.

7 A. (Witness reviewing.)

8 Q. Do you have any reason to believe
9 paragraph 3 is untrue?

10 MR. BIANCO: Objection to the
11 form of the question.

12 A. I may have doubted the amount,
13 but that's it.

14 Q. But you knew that you owed some
15 balance?

16 A. Yes.

17 Q. Okay.

18 And you knew that balance was
19 somewhere -- well, let me ask you that.

20 What did you think the balance
21 was?

22 MR. BIANCO: Objection to the
23 form of the question.

24 A. I don't know. I didn't think it
25 was that high.

1 LeeAnn McNally

2 Q. Did you think it was around
3 6,000?

4 MR. BIANCO: Objection to the
5 form of the question.

6 You can answer.

7 A. No.

8 Q. Did you think it was around
9 5,000?

10 MR. BIANCO: Objection to the
11 form of the question.

12 You can answer.

13 A. No, I thought it was less.

14 Q. Less than five thousand?

15 A. Yes.

16 Q. More than 4,500?

17 MR. BIANCO: Objection to the
18 form of the question.

19 A. I thought maybe it was around
20 four.

21 Q. Okay.

22 Did you receive account
23 statements in the mail from Beneficial in
24 connection with your loan from Beneficial?

25 A. I don't recall.

1 LeeAnn McNally

2 I never attempted to pay.

3 Q. Okay.

4 A. That's my only objection.

5 Q. So look at paragraph 4, please.

6 A. (Witness reviewing.)

7 Um-hum.

8 Q. Paragraph 4 alleges "Defendant
9 opened an account with Beneficial on
10 August 1st, 2006."

11 Do you have any reason to doubt
12 the veracity of that allegation?

13 A. No.

14 Q. And after Subsection 2 of
15 paragraph 4, says, "The last payment posted on
16 the account was May 31, 2009."

17 Do you have any reason to doubt
18 the veracity of that allegation?

19 A. No.

20 Q. So you think you probably made
21 your last payment on that account sometime
22 around May 31, 2009?

23 A. It's possible.

24 Q. And then it says, "The account
25 was charged off on January 21, 2010."

1 LeeAnn McNally

2 Do you see that?

3 A. Yes.

4 Q. Any reason to doubt that?

5 MR. BIANCO: Objection to the
6 form of the question.

7 You can answer.

8 A. No.

9 Q. In fact, this affidavit of facts
10 alleges you did make payments on your
11 Beneficial loan, doesn't it?

12 A. It does.

13 Q. Does that correspond with your
14 memory of your loan for Beneficial?

15 A. Yes. I know I made payments.

16 Q. Okay.

17 Paragraph 5, take a quick look at
18 that.

19 A. Okay.

20 (Witness reviewing.)

21 Okay.

22 Q. Do you have any reason to doubt
23 the veracity of the allegations in paragraph
24 5?

25 MR. BIANCO: Objection to the

1 LeeAnn McNally

2 form of the question.

3 You can answer.

4 A. Could you repeat the question?

5 Q. Do you have any reason to doubt
6 the veracity of that statement in paragraph 5?

7 MR. BIANCO: Objection to the
8 form of the question.

9 A. No.

10 Q. Take a quick look at paragraph 6.

11 A. (Witness reviewing.)

12 Q. Do you have any reason to doubt
13 the veracity of the statement in paragraph 6?

14 A. No.

15 Q. Okay.

16 (McNally Exhibit 9, Document
17 bearing Bates stamp Agoado-F&G-000007,
18 marked for identification.)

19 Q. Showing you what's been marked as
20 McNally Exhibit 9, bears Bates stamp
21 Agoado-F&G-000007.

22 Do you recognize this document?

23 A. No.

24 Q. This document is a letter, right?

25 A. Yes.

1 LeeAnn McNally

2 Q. Who is it addressed to?

3 A. LeeAnn DeRosa.

4 Q. That's you?

5 A. Yes.

6 Q. What is the address of the
7 letter?

8 A. 151 Hilary Street, Oakdale,
9 New York.

10 Q. That's the address you grew up
11 at, right?

12 A. Yes.

13 Q. And address your parents still
14 live at?

15 A. Yes.

16 Q. Do you have any reason to doubt
17 that this letter made its way to 151 Hilary
18 Street in or around May 23, 2012?

19 MR. BIANCO: Objection to the
20 form of the question.

21 You can answer.

22 A. No.

23 Q. If your parents had received this
24 letter, would they have given a copy of it to
25 you?

1 LeeAnn McNally

2 MR. BIANCO: Objection to the
3 form of the question.

4 A. I would like to think they would.

5 Q. Do you remember them giving you a
6 copy of this letter?

7 A. This letter does not look
8 familiar to me.

9 Q. The first line of the letter
10 after it says Dear LeeAnn DeRosa, it says, "A
11 judgment has been sent to court for entry in
12 the above matter."

13 Do you remember being notified by
14 Forster & Garbus that a judgment had been sent
15 for entry --

16 MR. BIANCO: Objection to the
17 form of the question.

18 Q. -- in a case against you?

19 MR. BIANCO: Objection to the
20 form of the question.

21 You can answer.

22 A. No.

23 Q. Had you received this letter,
24 what would you have done in reaction to it?

25 MR. BIANCO: Objection to the

1 LeeAnn McNally

2 form of the question.

3 A. I would have contacted the
4 office, contacted Forster & Garbus.

5 Q. Okay.

6 Do you remember contacting
7 Forster & Garbus in response to this letter or
8 a letter like it?

9 A. I don't remember.

10 Q. Does that mean you didn't do it
11 or does that mean you just don't remember if
12 you did it or not?

13 A. I really don't remember if I did
14 it or not.

15 Q. Okay.

16 THE WITNESS: Can I get a water?

17 MR. BIANCO: Sure. Take a break.

18 (Recess taken.)

19 (McNally Exhibit 10, Document
20 bearing Bates stamp Agoado-F&G 000008
21 through 000011, marked for
22 identification.)

23 Q. Showing you what's been marked as
24 McNally Exhibit 10. It has Bates stamp
25 Agoado-F&G 000008 through 000011.

1 LeeAnn McNally

2 Look through all four pages
3 before I ask you my next question, please.

4 A. (Witness reviewing.)

5 Q. You can look through for now. I
6 am not going to quiz you on it quite yet.

7 A. (Witness reviewing.)

8 Q. Let me know when you are ready.

9 A. (Witness reviewing.)

10 Yep.

11 Q. Do you recognize this document or
12 those documents?

13 A. Not really.

14 Q. First two pages labeled 08, Bates
15 stamp 08 and 09 appear to be similar except
16 for 08 has a signature from clerk of the
17 district court and a Bates stamp of June 27,
18 2012; do you see that?

19 A. Yes.

20 Q. I will represent to you that this
21 is a transcript of your judgment. Is your
22 name on this document?

23 A. Yes.

24 Q. Do you have an understanding of
25 what it is?

1 LeeAnn McNally

2 MR. BIANCO: Objection to the
3 form of the question.

4 What is?

5 MR. CURTIS JOHNSON: What the
6 first two pages are?

7 MR. BIANCO: Okay.

8 You can answer.

9 A. Not really.

10 Q. Okay.

11 Turn to the letter that starts on
12 the third page that I provided you.

13 A. (Witness reviewing.)

14 Q. It's a letter dated May 31, 2012
15 from Forster & Garbus and that's addressed to
16 you, right?

17 A. Yeah.

18 Q. Do you recognize this letter?

19 A. No.

20 Q. In the first line after it says,
21 "Dear LeeAnn DeRosa" it says, "A judgment has
22 been duly entered in court against you."

23 Do you see that?"

24 A. Yes.

25 Q. Had you received this letter -- I

1 LeeAnn McNally
2 know you -- do you recall the letter? Let me
3 ask you this: Do you recall receiving the
4 letter?

5 A. No.

6 Q. Okay.

7 Had you received this letter,
8 would you have understood that a judgment had
9 been entered against you after reading that
10 line?

11 A. Yes.

12 Q. Okay.

13 What would you have done when you
14 learned there was a judgment entered against
15 you?

16 MR. BIANCO: Objection to the
17 form of the question.

18 A. I honestly don't know what I
19 would have done.

20 Q. You see the next sentence in that
21 letter says, "The judgment bears interest of 9
22 percent per year until fully paid."

23 Did you see that?

24 A. I do.

25 Q. Do you have an understanding of

1 LeeAnn McNally

2 how interest works?

3 A. I do.

4 Q. Okay.

5 You understand that the amount of
6 the judgment, which was \$7,216.41, the
7 interest would run on that judgment?

8 A. Yes.

9 Q. Okay.

10 Go back to the first page real
11 quick.

12 A. (Witness complying.)

13 Q. You see the line says, "Amount
14 awarded \$6,661.60"?

15 A. Yes.

16 Q. Below it there is an interest
17 amount from December 18, 2011 of \$267.74?

18 A. Um-hum.

19 Q. What is your understanding of
20 that interest amount?

21 A. I guess it was the interest that
22 had accrued from the time they got my debt.

23 Q. Okay.

24 Then it says, "Total damages
25 \$6,929.34."

1 LeeAnn McNally

2 I am not good at math, so I am
3 going to give you a calculator. I don't
4 expect anyone to be good at math, that's why
5 we became lawyers, right (handing)?

6 You can add up \$6,661.60 and
7 267.74.

8 A. (Witness calculating.)

9 Q. I don't think the decimal worked
10 right when you did that.

11 A. Oh.

12 Q. Try again.

13 A. It's different. All right. Hold
14 on. These new fancy phones, I don't know.

15 MR. BIANCO: 6,661.6, plus
16 267.74.

17 A. (Witness calculating.)

18 Q. Okay.

19 What do you get?

20 A. \$6,929.34.

21 Q. Okay.

22 That's the same number as the
23 total damages, right?

24 A. Yes.

25 Q. Then it lists cost by statute

1 LeeAnn McNally
2 filing fee, sheriff's fee, service fee,
3 transcript filing fee and there are amounts
4 next to those; \$50, \$140, \$56.07, \$25 and
5 \$16; do you see that?

6 A. Yes.

7 Q. Now, I can ask you to add all
8 those up or I can represent to you that those
9 add up to \$287.07; does that sound right now,
10 287.07 totaled up?

11 A. Yeah.

12 Q. Okay.

13 And if you add the 287.07 to the
14 \$6,929.34, it equals \$7,216.41; does that
15 sound right?

16 A. Sounds right.

17 Q. Okay.

18 So do you understand how the
19 amount awarded in the judgment plus the costs
20 and interest came to be \$7,216.41?

21 MR. BIANCO: Objection to the
22 form of the question.

23 You can answer.

24 A. Yes.

25 Q. Okay.

1 LeeAnn McNally

2 You can give me my phone back.

3 A. (Handing.)

4 (McNally Exhibit 11, Document
5 bearing Bates stamp Agoado-F&G-000012,
6 marked for identification.)

7 Q. Showing you what's been marked
8 McNally Exhibit 11 (handing).

9 A. (Witness reviewing.)

10 Q. It has Bates stamp
11 Agoado-F&G-000012.

12 Do you recognize this document?

13 A. No.

14 Q. Again, it's a letter, it's
15 addressed to you, right?

16 A. Yes.

17 Q. The address on it is 151 Hilary
18 Street, which is your parents' address?

19 A. Yes.

20 Q. The date on the letter is
21 June 13, 2012, right?

22 A. Yes.

23 Q. Does this timing of June 2012,
24 does that refresh your recollection as to
25 whether you found out your bank account was

1 LeeAnn McNally

2 frozen in 2012 or '13?

3 A. Yes.

4 Q. What is your recollection now?

5 A. Must have been 2012.

6 Q. Okay.

7 This letter went to your parents'
8 address like you said on June 13, 2012?

9 A. Yes.

10 Q. You said you called your father
11 sometime in June 2012 to talk about the fact
12 there is a judgment against you, right?

13 A. Yes.

14 Q. When you called your father, did
15 he mention that he received a letter similar
16 to this?

17 A. No.

18 Q. Did he mention he received any
19 letters from Forster & Garbus?

20 A. No.

21 Q. Why do you suppose that is?

22 MR. BIANCO: Objection to the
23 form of the question.

24 You can answer.

25 A. I have no idea.

1 LeeAnn McNally
2 was like in bringing it all up again is very
3 painful to me. So really just feel like if
4 something wasn't done properly, then maybe
5 somebody should just stop doing that.

6 It's got nothing to do with
7 money. It's got to do with the way things are
8 done and that's all, and the way I was
9 treated. I am not some greedy person. I am
10 not a greedy person at all. I just didn't
11 like the way I was treated. And that is all I
12 have to say about it.

13 Q. Okay.

14 What did you think that Forster &
15 Garbus did wrong?

16 MR. BIANCO: Objection.

17 Again, just again from your own
18 understanding is perfectly fine.

19 A. I just -- I don't remember these
20 letters. I just -- I don't understand why I
21 got -- I mean -- what they did, like freezing
22 my account and just like all of it was just --
23 it just seemed like it happened all at once.

24 And maybe I don't know anything
25 now, you know, 'cause I am not a lawyer or

1 LeeAnn McNally
2 anything like that, but I felt wronged. Maybe
3 they didn't do anything wrong, maybe -- I'm
4 sorry.

5 But it was a scary thing that
6 happened to me. That's all. And I felt
7 wronged, because I didn't feel like it was
8 right for them to freeze my account and I
9 didn't feel like it was right -- I don't even
10 know half the stuff that was done. I didn't
11 know my dad was served, I had no idea. I mean
12 I don't know what else to say except that.
13 My marriage almost ended. It was a very hard
14 time, so I guess I just felt like it was just
15 wrong.

16 Q. Do you understand that this case
17 was brought as a putative class action?

18 MR. BIANCO: Objection to the
19 form of the question.

20 A. Does that mean more than me and
21 these other people?

22 Q. That's what I am asking. Do you
23 understand that you are seeking to have this
24 case certified as a class action?

25 A. Yeah, 'cause there is more than

1 LeeAnn McNally

2 form of the question.

3 A. You know what, I would like to
4 say yes, but it sure does take an awful long
5 time and I still see things being done that
6 aren't right.

7 Q. Can you articulate the basis of
8 your claims against Forster & Garbus?

9 MR. BIANCO: Objection to the
10 form of the question.

11 You can answer in your own words.

12 A. I am not -- I feel like I've
13 already said how I feel about this whole
14 thing. My problem is just the way it went
15 about. I don't know how else to say it. I
16 just -- I can't articulate what I want to say.
17 I don't...

18 Q. Do you know how many causes of
19 action you've brought against Forster &
20 Garbus?

21 MR. BIANCO: Objection to the
22 form of the question.

23 A. I do not.

24 Q. Do you know the laws under which
25 those causes of action were brought?

1 LeeAnn McNally

2 A. I do not.

3 Q. Have you ever heard of the
4 General Business Law Section 349?

5 A. No.

6 Q. Okay.

7 You have heard of the Fair Debt
8 Collection Practices Act, right?

9 A. Yes.

10 Q. Do you understand you have a
11 claim under the Fair Debt Collection Practices
12 Act?

13 A. If you say I do.

14 Q. Have you ever heard of Judiciary
15 Law Section 487?

16 A. No.

17 Q. Do you understand you have a
18 claim against Forster & Garbus for unjust
19 enrichment?

20 MR. BIANCO: Objection to the
21 form of the question.

22 You can answer.

23 A. Unjust enrichment? I -- no, I
24 don't know. I don't know.

25 Q. Do you know what unjust

1 LeeAnn McNally

2 Q. Okay.

3 I would like to move to McNally
4 2, which is the actual check.

5 A. Okay.

6 Q. If we look at page 2 of this
7 document, up near the top, there is a phone
8 number. It appears to be 631-492-7741?

9 A. Yes.

10 Q. Is that your phone number or was
11 that your phone number?

12 A. That was my cell phone number,
13 yes.

14 Q. Was it your cell phone number in
15 August of 2006?

16 A. Yes.

17 Q. And we earlier discussed the
18 partially redacted number that ends in 5196;
19 would you agree that was -- that would be your
20 checking account number at the time?

21 A. Yes. I didn't really realize it
22 until hearing it out loud, because I used to
23 say it to myself when I had to pull out
24 deposit slips, but yes, yes, that's my
25 checking account.

1 LeeAnn McNally

2 A. I changed my address.

3 Q. How did you change your address?

4 A. I went to the post office.

5 Q. Did you notify the New York
6 Department of Motor Vehicles that you changed
7 your address?

8 A. Yes.

9 MR. BIANCO: Objection to the
10 form of the question.

11 THE WITNESS: Sorry.

12 MR. BIANCO: She asked and
13 answered that again.

14 Q. Did you notify any creditors when
15 you changed your address?

16 A. I changed my address, I felt like
17 that should have covered it. I didn't know I
18 had to call everybody and tell them my address
19 changed.

20 Q. If you look at the third page of
21 this document --

22 MR. BIANCO: Did you get all of
23 that, Cindy?

24 THE COURT REPORTER: Yes.

25 Q. So there is -- under Transaction,

1 LeeAnn McNally

2 Have you reviewed your credit
3 report in the past three years?

4 A. No, I have not.

5 Q. Do you know if this Beneficial
6 account was reported to your credit history?

7 A. I do not know.

8 (McNally Exhibit 21, Bates
9 Agoado-F&G-000015 through 000020, marked
10 for identification.)

11 Q. Handing you what's been marked as
12 McNally 21 (handing).

13 A. (Witness reviewing.)

14 Q. I will represent to you that
15 these records are from Midland Credit
16 Management called Claims Notes; do you see
17 under name and address on page 1, it lists
18 your name and your Oakdale address?

19 A. Yes.

20 Q. Does it properly identify your
21 social security number?

22 A. Yes.

23 Q. If you turn to page 4 of 6, there
24 is a listing for June 18, 2012?

25 A. (Witness reviewing.)

1 LeeAnn McNally

2 MR. BIANCO: Objection to the
3 form of the question.

4 You can answer for yourself as a
5 layperson.

6 A. I guess it says that if
7 defendants have insufficient evidence of the
8 existence of the consumer's debt -- I'm kind
9 of a little confused about it. Basically, the
10 defendants have insufficient evidence of the
11 existence of the consumer debt excluded from
12 the class or officers and directors of
13 defendants at all relative -- relevant times.
14 I'm -- I am a little unsure. Little unsure
15 about it.

16 Q. Okay.

17 Do you believe -- first of all,
18 would you agree that suit was filed against
19 you on behalf of Midland Funding seeking to
20 collect the Beneficial debt?

21 A. Yes.

22 Q. Having reviewed the records that
23 we have today, do you believe that Midland
24 Funding possessed documentation of that debt?

25 MR. BIANCO: Objection to the

1 LeeAnn McNally

2 form of the question.

3 You can answer.

4 A. Yes.

5 Q. Do you believe that suit was
6 brought against you with insufficient evidence
7 of the debt, as a layperson, not as an
8 attorney?

9 A. I believe they had evidence of a
10 debt, yes, but I don't know. No, just, yes.

11 Q. Yes, you do believe they had
12 insufficient --

13 A. I don't believe they had
14 insufficient evidence, because I said that I
15 owed the money. I don't say -- I never said I
16 didn't owe money, never said that.

17 Q. Flipping ahead to page 24,
18 paragraph 74.

19 A. (Witness complying.)

20 Q. Second sentence states, "Upon
21 information and belief, neither Midland
22 Funding nor Forster & Garbus, LLP made a
23 reasonable effort to verify McNally's
24 purported debt before harassing her or filing
25 suit."

1 LeeAnn McNally
2 Beneficial, the check and the other things. I
3 mean I don't know where any of that stuff is,
4 I don't know where it came from, I don't know
5 what it is, I don't know where it was before,
6 so I will say that that signed check is
7 certainly mine.

8 Q. Speaking as to Midland Credit
9 Management, did you believe they used any
10 unfair or unconscionable means to collect a
11 debt from you, the Beneficial debt?

12 MR. BIANCO: Objection to the
13 form of the question.

14 A. I have no idea. I am not
15 familiar with the debt laws and I don't really
16 know what was -- I know some of the things
17 that were done to me, not necessarily by
18 Midland but by others, were wrong, like
19 threatening to throw me in jail, I don't know.
20 You know, when you owe money and everyone is
21 calling, you don't know what is right and
22 what's wrong. You just try to make the best
23 of it.

24 Q. Well, if you can, just the
25 Beneficial account and Midland Credit

1 LeeAnn McNally
2 Management's dealings with you, did you ever
3 have any contact with Midland Credit
4 Management?

5 MR. BIANCO: Objection to the
6 form of the question.

7 You can answer.

8 A. I really don't remember. I mean
9 it was a really long time ago, and like I
10 said, it wasn't the only people asking me for
11 money.

12 Q. Do you have any basis to assert
13 that Midland Funding did not properly purchase
14 your debt?

15 MR. BIANCO: Objection to the
16 form of the question.

17 A. I would have no idea. I really
18 don't.

19 MR. MATTHEW JOHNSON: That's all
20 I have.

21 MR. CURTIS JOHNSON: I might have
22 rebuttal to your questions too.

23 MR. BIANCO: I think it's proper
24 for me to go first. You can finish up
25 with not only your rebuttal --

C E R T I F I C A T E

STATE OF NEW YORK)

) ss.:


COUNTY OF SUFFOLK)

I, CINDY A. AFANADOR, a Notary Public within and for the State of New York, do hereby certify:

That LEEANN MCNALLY, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of July, 2015.



CINDY A. AFANADOR